

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Cellular Service and Other Commercial)
Mobile Radio Services in the Gulf of)
Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing)
of Applications for Unserved Areas in the)
Cellular Service)

CC Docket No. 90-6

To: The Commission

REPLY COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of its wireless subsidiaries and affiliates, hereby replies to comments in the captioned docket. *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, *Second Further Notice of Proposed Rule Making*, FCC 97-110, (April 16, 1997) ("SFNPRM"). In its initial comments, BellSouth noted that PCS licensees purchased their licenses at auction based on FCC rules which indicated that PCS licensees in markets that abut the Gulf of Mexico ("Gulf") would be permitted to serve the Gulf, and urged the Commission not to disturb this decision. Consistent with regulatory parity, BellSouth also supported adoption of the proposed Exclusive Zone for cellular licensing in the Gulf, but urged the Commission to incorporate the proposed Coastal Zone into adjacent land-based cellular markets. As shown below, the record clearly supports this position.

I. THE RECORD DOES NOT SUPPORT AN ADDITIONAL PCS ALLOCATION FOR THE GULF

The Commission should not adopt a separate PCS allocation for the Gulf of Mexico. Commenters clearly demonstrate that the current definitions for PCS markets authorize PCS

licensees in markets that abut the Gulf to provide service within the Gulf.¹ The record, in turn, establishes that current PCS market boundaries extend into the Gulf² and the Wireless Telecommunications Bureau has stated:

Unlike cellular mobile service, there is no [separate] PCS licensee for the water areas of the Gulf of Mexico. Entities eligible to serve the Gulf of Mexico are the licensees of [markets] bordering the Gulf.

Mobil Oil Telcom, Ltd., 11 F.C.C.R. 4115, 4116 n.10 (WTB 1996). The record is devoid of any discussion explaining how or why existing PCS authorizations should be altered to permit additional PCS licensees to provide service within the Gulf. To the extent parties support the creation of a separate PCS market for the provision of service within the Gulf, they fail to acknowledge or address current Commission rules which already authorize the provision of PCS to the Gulf from land-based markets adjacent to the Gulf.³ Similarly, those who oppose the provision of PCS in the Gulf ignore these same rules.⁴ Absent a record justification for altering the current regulatory scheme which authorizes the provision of PCS from land-based markets

¹ See BellSouth Comments at 4-7; PrimeCo Personal Communications, L.P. Comments at 4-15; Sprint Spectrum Comments at 1-7; Joint Comments of Aerial Communications, Inc. and Western PCS BTA I Corporation ("Joint Comments") at 3-5.

² BellSouth Comments at 5; PrimeCo Comments at 4-6; Joint Comments at 3-4.

³ Shell Offshore Services Company ("Shell") Comments at 7-8. Shell Offshore Services Company urges the Commission to preclude PCS service within the Gulf because it would require the relocation of 2 GHz microwave links within the Gulf. Shell Comments at 7-8. The Commission already rejected these arguments when it initially authorized PCS. In order to make incumbent 2 GHz microwave licensees whole, the Commission required PCS licensees to provide and pay for comparable facilities. See 47 C.F.R. § 24.239; *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 F.C.C.R. 6886 (1992). Thus, Shell's argument should be summarily dismissed. Finally, the marketplace, not FCC regulation, should dictate whether PCS is provided within the Gulf. Cf. Shell Comments at 7-9.

⁴ See Shell Comments at 7-8.

adjacent to the Gulf, the Commission should not issue separate PCS licenses for the provision of service only within the Gulf.

Wireless service to the Gulf is a valuable commodity. Existing PCS licensees have already paid substantial sums for the right to serve coastal areas of the Gulf. The issuance of authorizations for the provision of PCS service solely within the Gulf would require a reduction in the size of coastal PCS markets and would constitute an ex post facto reduction in the value of these markets. Accordingly, the Commission should not adopt a separate PCS allocation for the Gulf.

II. THE RECORD SUPPORTS INCORPORATING THE PROPOSED CELLULAR COASTAL ZONE INTO ADJACENT LAND-BASED MARKETS

As shown below, the record demonstrates that adoption of the proposed Coastal Zone and associated licensing scheme will create interference problems and undermine the provision of seamless service to coastal areas of the Gulf. The record also establishes that community of interest and regulatory parity principles strongly favor extending land-based cellular markets into the Gulf, instead of creating a separate Coastal Zone.

A. At a Minimum, The Proposed Cellular Coastal Zone Should Be Incorporated Into Land-Based Markets

According to commenters, community of interest and regulatory parity principles require incorporation of the proposed cellular coastal zone into land-based markets.⁵ Boaters traveling within the proposed Coastal Zone are likely to live within adjacent land-based areas. As cellular subscribers, these boaters desire a service that provides reliable, inexpensive communications both on land and in the Gulf. Thus, there is a community of interest between the Coastal Zone

⁵ See, e.g., BellSouth Comments at 4-9; GTE Comments at iv, 2, 5-8; Palmer Wireless, Inc. Comments at 4-5. Accord Texas RSA Comments at 8-9; Southwestern Bell Mobile Systems, Inc. ("SBMS") Comments at 7-9.

and adjacent land-based markets. Under the Commission's Coastal Zone proposal, however, boaters would be forced to subscribe to two cellular carriers -- a Coastal Zone carrier and a land-based carrier -- to avoid roaming charges. Moreover, as discussed below, the FCC's proposal would impair service to beach areas. Incorporating the twelve mile Coastal Zone into land-based markets eliminates these problems.⁶

With regard to regulatory parity, commenters note that Wireless Communications Service ("WCS") markets extend twelve nautical miles into the Gulf and that PCS markets extend varying distances into the Gulf.⁷ No separate authorization can be obtained to provide either PCS or WCS solely to coastal areas of the Gulf. The Commission should adopt the same approach for cellular. Moreover, to achieve parity, the Commission should adopt a uniform boundary for the provision of wireless service in the Gulf from land-based markets. A twelve mile boundary certainly would be appropriate given that (i) the Commission proposed to create a coastal zone extending twelve miles into the Gulf, and (ii) the WCS markets also extend twelve miles into the Gulf.⁸

As one Commenter noted, the creation of a separate Coastal Zone would create a "Zone of Chaos."⁹ BellSouth concurs and notes that a Coastal Zone would be inconsistent with the goal of the subject proceeding — to ensure that water areas along the Gulf coast will receive

⁶ GTE Comments at 6. *Accord* SBMS Comments at 8.

⁷ See BellSouth Comments at 5; AT&T Comments at 1-2, 5-6; PrimeCo Comments at 4-6; Joint Comments at 3-4. See also *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, *Report and Order*, FCC 97-50 (Feb. 19, 1997). WCS may be used to provide services that compete directly with cellular and PCS.

⁸ *Accord* MobileTel Comments at 2-4; Vanguard Cellular Systems, Inc. Comments at 2; AT&T Comments at 5-6.

⁹ PrimeCo Comments at 3.

ubiquitous, reliable coverage.¹⁰ A separate Coastal Zone will cause innumerable interference problems for cellular licensees both on land and in the Exclusive Zone.¹¹ Because the Commission has required land-based licensees to keep their contours from extending into the Gulf, many beach areas — located within the land-based markets — are unable to receive adequate cellular service.¹² In essence, the weakest signal is at the outer boundary of a contour. Under the Commission's rules, this outer boundary must be located at the beach. If a Coastal Zone license is issued, the signal from the Coastal Zone licensee will likely be stronger at the beach than that of the land-based licensee.¹³ As a result, subscribers located within their home market will roam onto the Coastal Zone system and be forced to incur the higher fees generally associated with roaming.¹⁴ Such a result is inconsistent with the public interest.

B. The Boundaries Of Cellular Markets Abutting The Gulf Should Be Extended 25 Miles or More Into The Gulf, Depending Upon Location

The record demonstrates that land-based cellular carriers can provide reliable cellular service more than 25 miles offshore from land-based transmitters.¹⁵ The record also indicates

¹⁰ Notice at ¶ 27. Accord AT&T Comments at 6.

¹¹ GTE Comments at 2, 3-5; SBMS Comments at 3-4; Texas RSA 20B2 Limited Partnership ("Texas RSA") Comments at 8-9; 360°Communications Company Comments at 2-5, 9; MobileTel Comments at 4-6.

¹² GTE Comments at 2, 3-5; SBMS Comments at 3-4; Texas RSA Comments at 8-9; 360°Communications Company Comments at 2-5, 9.

¹³ This result can be expected because (i) radio signals propagate better over the water than over land, (ii) a land-based transmitter must be located a substantial distance from the beach to prevent any extensions into the Gulf, (iii) a number of buildings and hotels are likely to be located between a land-based site and the beach, and (iv) it is unlikely that there will be any structures between a water-based site and the beach. See GTE Comments at 3-4; SBMS Comments at 3.

¹⁴ AT&T Comments at 3; SBMS Comments at 4, 6.

¹⁵ GTE Comments at 10; Radiofone Comments at 4.

that boaters are increasingly relying on cellular service for emergency communications.¹⁶

Accordingly, there is heightened importance associated with providing reliable, seamless coverage in Gulf areas with heavy boat traffic.

Based on these factors, the Commission should strongly consider GTE's proposal to extend the boundaries of land-based cellular markets 25 miles into the Gulf, except in Florida.¹⁷ BellSouth believes that, absent a record that incumbent Gulf of Mexico Service Area licensees are providing substantial cellular service between 12 and 25 miles offshore, GTE's proposal should be adopted as the most effective means for improving the communications for and safety of recreational boaters. Moreover, because offshore drilling is effectively prohibited in the first 50 miles off the Florida coast, the boundaries of land-based cellular markets in Florida should be extended 50 miles into the Gulf.¹⁸ Under this proposal, the majority of recreational boaters could receive cellular service in the Gulf from the same licensee that provides their land-based cellular service.

III. A LICENSEE MAY NOT PLACE A CONTOUR EXTENSION OR CELL SITE IN ANOTHER MARKET WITHOUT THE CONSENT OF THE LICENSEE FOR SAID MARKET

The Commission should reject any proposal that would permit a cellular licensee to place a transmitter within the CGSA of another licensee without consent.¹⁹ According to Coastal, water-based licensees should have an absolute right to place transmitters within the CGSA of a

¹⁶ GTE Comments at 9. GTE compiled information from the Coast Guard which indicated that recreational boaters regularly travel 30-35 miles off shore and rely on cellular service for rescue calls. *Id.*

¹⁷ GTE Comments at 8-11. *Accord* Radiofone Comments at 4-5.

¹⁸ *See* GTE Comments at 10-11.

¹⁹ Bachow/Coastal, L.L.C. ("Coastal") Comments at 24-28.

co-channel cellular licensee, without first obtaining the consent of the co-channel licensee, because

The Commission has not required land-based carriers to obtain the Gulf-based carrier's consent to encroach into the Gulf, while the Gulf-based carrier must receive the land carrier's consent in order to extend into the adjacent land-based markets. Gulf-based carriers, on the other hand, have been blocked from obtaining even *de minimis* non-consensual extensions into a land-based carrier's CGSA.²⁰

This statement does not support Coastal's objective and will not create a level playing field.²¹

First, Coastal states that because land-based licensees have received *de minimis* extensions into the Gulf without the consent of Gulf licensees, Gulf licensees should be entitled to similar treatment. BellSouth concurs. Coastal implies, however, that similar treatment requires that water-based licensees should have an absolute right to place transmitters within the CGSA of a co-channel licensee, provided the transmitters only produce a *de minimis* extension. BellSouth respectfully disagrees. The Commission's *de minimis* extension policy can be summarized as follows: a licensee may request FCC approval of small extensions into an adjacent market, even over the objections of the adjacent licensee, provided the extensions do not encroach on the adjacent licensee's *actual* service area. Thus, the FCC has approved extensions into the Gulf over the objections of Gulf licensees, provided the extensions do not overlap with an area in which the Gulf licensee is actually providing service. Conversely, the Commission has rejected the proposals of Gulf carriers for *de minimis* extensions into land-based markets because these proposals would overlap with the areas where the land-based cellular licensees are providing service. *See SFNPRM* at ¶ 40. Thus, land-based cellular carriers have not received preferential treatment *vis-a-vis* Gulf licensees.

²⁰ Coastal Comments at 25.

²¹ Coastal Comments at 25.

A rule that would authorize water-based licensees to place transmitters within the CGSA of a co-channel licensee without first obtaining the consent of the land-based licensee would not level the playing field.²² Rather, Gulf licensees would be advantaged by such a proposal. Specifically, Gulf licensees would be the only cellular licensees entitled to sites and extensions within areas served by a co-channel licensee without first obtaining the consent of the co-channel licensee.

Moreover, as discussed above, land-based licensees are largely unable to provide the signal strength required for cellular service in beach areas because they are unable to obtain extensions into the Gulf. If Gulf licensees can place transmitters on land and transmit a signal out to the Gulf, their signal will be the strongest on the beach and will prevent land-based licensees from serving high-demand beach areas. Thus, customers of land-based systems will be forced to roam.

Coastal's proposal also would create numerous system design and call set-up problems.²³ The potential for such problems greatly increases as cellular carriers implement digital equipment and new technologies.²⁴

A fundamental principle of the cellular rules is that a cellular licensee is entitled to have a CGSA free of contours from adjacent cellular licensees on the same frequency block.²⁵ This policy ensures that a cellular licensee can operate its system free from interference and protects consumers from paying roaming fees when traveling within their home market. Because of these

²² Cf. Coastal Comments at 25.

²³ SBMS Comments at 6.

²⁴ SBMS Comments at 6-7.

²⁵ 47 C.F.R. § 22.912. Accord AT&T Comments at 7-9.

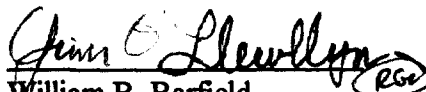
interference concerns, there has never been an absolute right to place a contour or cell site in the CGSA of another carrier.²⁶ However, cellular carriers can locate sites within the CGSA of another licensee with the licensee's consent. The Commission should clarify that this policy applies to all cellular licensees, whether land- or water-based, and should reject proposals that would allow any licensee to place a transmitter or contour within areas receiving service from a co-channel licensee without obtaining the consent of the co-channel licensee.²⁷

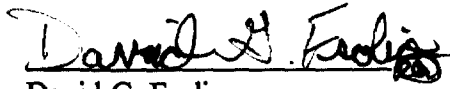
CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to (i) adopt the proposed "Exclusive Zone," (ii) extend land-based cellular market boundaries a minimum of 12 miles into the Gulf, and (iii) clarify that sites may be located in the CGSA of another carrier only with consent.

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August 4, 1997

²⁶ SBMS Comments at 5.

²⁷ BellSouth Comments at 12-13; 360° Comments at 8-10; AT&T Comments at 6-9; MobileTel Comments at 6.

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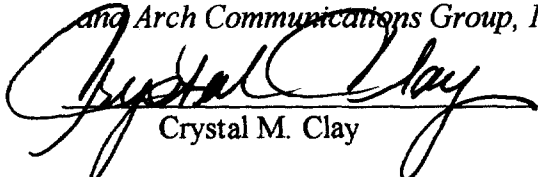
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